

United States Government
NATIONAL LABOR RELATIONS BOARD
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November 25, 2008

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Re: Ruan Transport Corporation
Case 36-UD-368

Dear Parties:

On the basis of the investigation made to date in the above matter, it appears appropriate now to conduct a secret ballot to determine whether or not certain employees¹ of Ruan Transport Corporation wish to withdraw the authority of District Lodge No. 24, International Association of Machinists, AFL-CIO and Beaver Lodge No. 1432 to require under its agreement with the Employer, that certain lawful payments to the Union be a condition of employment.

Accordingly, pursuant to Section 9(e)(1) of the National Labor Relations Act, as amended, and Section 102.85 of the Board's Rules and Regulations, as amended, an election by secret ballot will be conducted under the direction of the Regional Director of the 19th Region of the National Labor Relations Board. The election will be conducted

¹ All truck drivers and mechanics employed at the Employer's Portland, Oregon facility, whom are contracted to the Johnson Controls, Inc. (JCI) account; excluding all office clerical employees, quality control employees, professional employees, janitor/watchmen, and guards and supervisors as defined by the Act.

entirely by mail ballot². The ballots will be mailed from the Subregional office, National Labor Relations Board, 601 S.W. Second Avenue, Suite 1910, Portland, Oregon 97204 and must be returned to that office no later than 3:00 pm on Monday, December 29, 2008. The ballots will be counted at the Subregional office at 3:30 pm on Monday, December 29, 2008.

3170 at 4:30 pm on Monday, December 8, 2008
2 In order to determine how best to conduct the election herein, on November 17, 2008, I issued an

Order to Show Cause seeking evidence and argument from the parties on the issues presented. Responses to my Order to Show Cause were filed by the Employer and the Petitioner. The Employer takes the position that a manual election is appropriate, in this situation, that the standards set forth in San Diego Gas & Electric, 325 NLRB 1143 (1998) have not been met and that a mail ballot is inappropriate. The Petitioner takes the position that a mail ballot election is appropriate. The Union did not file a response and has not taken a position on the issues. Subsequent to the deadline for receipt of responses pursuant to the Order to Show Cause, the Employer submitted a supplemental response asserting that the Petitioner now agrees that a manual election "would be the fairest, most effective method of conducting the election" in this matter. Petitioner was contacted about this apparent change in position and has denied, in writing, that his position has changed. Petitioner takes the position that he continues to believe a mail ballot election is appropriate, but admits he expressed flexibility in this position should a manual balloting format be directed.

In directing that the election be conducted by mail ballot I have carefully considered the evidence and arguments presented. Contrary to the position of the Employer, I find that the standards set forth in San Diego Gas & Electric are met herein and that unit employees are "scattered" in that their job duties cover a wide geographic area and that their work schedules vary significantly with little advance notice.

The Employer employs approximately 41 employees in the undisputed appropriate unit. The Employer is under contract to JCI to transport product to various locations throughout the Western/Northwestern United States. The employees depart from the JCI facility at various days and times beginning on Sunday of each week. The employees return to the JCI facility after completion of their various routes, with most returning four days after departure, although a few return three days after departure and may then be assigned to local delivery routes. The Employer acknowledges it does not receive directions from JCI about the volume and locations of deliveries until Thursday of each week for routes to begin the following Sunday. The Employer is usually able to complete scheduling for unit employees on Thursday, but occasionally the schedule is not completed until Friday. A review of the four schedules provided by the Employer shows that employees were scheduled to leave between 5 am and 1 pm on Sundays, between 2 am and 8:15 am on Mondays, and between 2 am and 5:30 am on Tuesdays. The schedules do not indicate which, if any, of these drivers returned within three days (and may have been scheduled for other local delivery routes) and which returned within the usual four days.

As part of its response to my Order to Show Cause, the Employer proposed that a manual election held on Sunday from 8 am to 12:00 Noon and Monday from 5 am to 8 am would provide employees with "the fairest, most convenient and expeditious manner to cast a ballot." In reviewing the schedules provided, I note that between 7 and 9 employees (17%-22% of the unit) each week would already have departed the JCI facility for their assigned routes prior to the time the Employer proposes for the opening of the polls. In addition, between 3 and 5 employees (7%-12% of the unit) are either scheduled to depart after the closing of the polls and would be required to arrive early or are not scheduled to work on the days proposed by the Employer. As such, somewhere between 10 and 14 employees (24%-34% of unit employees) each week could not or may not be able to cast a ballot and thus, the schedule proposed by the Employer is not viable to assure that all unit employees are provided with an opportunity to cast a ballot.

An additional concern is the fact that, as acknowledged by the Employer, there is no location at the employees' work site, the JCI facility, where manual polling may be conducted. Given the large range of departure days and times and the fact that the unit consists largely of truck drivers who may be required to arrive in their trucks, locating an appropriate location that would be easily accessible to the employees may be quite difficult.

Accordingly, in order to guarantee the greatest degree of employee participation, I am directing that a mail ballot election be conducted among the unit employees. See also M & N Mail Service, Inc., 326 NLRB 451 (1998).

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this letter, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off.

Notices of Election will be furnished to the Employer for posting in conspicuous places throughout the premises or other appropriate means at a later date.

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236; *N.L.R.B. v. Wyman-Gordon Company*, 394 U.S. 759, decided April 13, 1969. Accordingly, it is hereby directed that an election eligibility list, containing the names and addresses of all the eligible voters, must be filed by the Employer with the Officer in Charge for Subregion 36 within seven (7) days of the date of this Direction of Election. The Officer in Charge shall make the list available to all parties to the election. In order to be timely filed, such a list must be received in the Subregional Office, 601 S.W. Second Avenue, Suite 1910, Portland, Oregon 97204, on or before Tuesday, December 2, 2008. No extensions of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Very truly yours,



Richard L. Ahearn
Regional Director

cc:

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